

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1672 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

PRAKASH JAIN

Versus

RATANCHAND JETHMAL SHAH

Appearance:

MR DT SONI for Petitioner

MR MUKESH R SHAH for Respondent No. 1

DS AFF.NOT FILED (R) for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/06/98

ORAL JUDGEMENT

This revision can be disposed of finally at the admission stage. Mr.D.T.Soni for the revisionist and Mr.M.R.Shah for the respondent No.1 have been heard. Mr.D.T.Soni had made statement at the bar that he has

filed affidavit of direct service on respondent Nos. 2(A) and 2(B) and the same is not on record. There is no reason to disbelieve the statement of Mr.D.T.Soni.

The brief facts are that the suit for eviction, and recovery of arrears of rent etc. was filed by the landlord against the tenant. Ad-interim injunction was granted ex parte which was confirmed by the Trial Court after hearing both the sides. An appeal was preferred against the order of the Trial Court. The appeal was delayed by 80 days and therefore, an application for condonation of delay was filed. The said application was rejected by the Appellate Court. Hence this revision.

An application for condonation of delay of 80 days in filing appeal was rejected by the Appellate Court on three grounds.

The first ground is that the person who moved the application for condonation of delay did not possess any power of attorney from the party. As such, he had no locus-standi to move application. The second ground was that in the opinion of the Appellate Judge it cannot be believed that the Counsel did not give intimation to the party of the order passed by the Trial Court. The third ground that there was talk of compromise between the parties, hence there was delay in filing the appeal was also unbelievable.

Having given my thoughtful consideration to the above reasonings, I find that the Appellate Judge has not adopted correct procedure and has not taken correct and lenient view in the matter.

Sofar as the question of locus-standi is concerned, no doubt initially the power of attorney was not filed but at the time of argument it was filed and taken on record by the Appellate Court. Consequently the first ground was mere technical and on this ground the application for condonation of delay could not be rejected.

Coming to the second ground there was no plausible reason or material before the Appellate Judge to conclude that there was no talk of compromise between the parties. If there was possibility of compromise filing an appeal could have been delayed. Hence this ground was also imaginary.

The third ground is also not such, on which such technical view could be taken. There is statement of the Appellant that his Counsel did not intimate him of the final order passed by the Trial Court. Such lapses usually occur and on the ground of mistake of the Counsel or lapse on his part the party should not suffer. Thus, I find that on none of these grounds the application for condonation of delay could have been rejected.

In the result, the revision has to be allowed and is hereby allowed. Order under revision is set aside. Finding on the ground for condonation of delay to be sufficient application for condonation of delay is allowed. The lower Appellate Court is directed to hear and decide the appeal on merit after hearing both the sides in accordance with law.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt